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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,334	07/12/2006	Alfred Langerak	294-232 PCT/US	2080

23869 7590 05/10/2010  
HOFFMANN & BARON, LLP  
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SYOSSET, NY 11791

EXAMINER
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ACKUN, JACOB K

ART UNIT	PAPER NUMBER
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3728

MAIL DATE	DELIVERY MODE
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05/10/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/553,334	<b>Applicant(s)</b> LANGERAK, ALFRED	
	<b>Examiner</b> Jacob K. Ackun Jr.	<b>Art Unit</b> 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 15-31 is/are pending in the application.
- 4a) Of the above claim(s) 1-13, 15-17, 19-23 and 25-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18 and 24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

1. Claims 1-13, 15-17, 19-23 and 25-31 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention or species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 3/26/10 (it is noted that while applicant indicates that Group 6 was elected, the claims presented for examination are those of Group 5). Claims 18 and 24 are examined on the merits below.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 18 and 24 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are indefinite because it is not clear how the limitations in the claims regarding the mold features and method of making steps are intended to further limit the product that is claimed.

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 18 and 24 are rejected under 35 U.S.C. 102(b or e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Goulette, Schlaupitz et al., Ott et al., Burnham or Davis, all cited herein. Claim 18 is understood to require a series of packages, each comprising first and second closing parts, the

closing parts being connected to each other by at least one hinge. Thus as can be readily appreciated, each of the applied references meets these claim limitations.

Note that the claim reads on a plurality of each of the reference containers and also that it would have been obvious to provide more than one of the containers in each reference, to provide increased storage capacity. Furthermore, claim 18 requires at least one of the closing parts to form a cavity for packaging a product. The claim also requires at least one of the peripheral edges of each closing part to engage an opposite at least one peripheral edge of the other closing part. All of these elements are believed to be readily apparent in the references. Claim 18 also requires at least slight curvature of the noted peripheral edges along substantially their entire longitudinal extent, as well as a hinge connecting a portion of the curved peripheral edge. Again, this is clearly shown in each reference. It may be noted, for example, that in Goulette each closing part has just one peripheral edge and that these have at least a slight curvature and are connected by a hinge, all as encompassed in claim 18.

Finally, the packages of each reference appear to be constructed with the methods and apparatus claimed. Note, for example, the MPEP sections with regard to product-by-process limitations in product claims. For example, the burden is now on the applicant to show that the reference containers are not constructed

using the methods and apparatus claimed, should the applicant disagree. Each prior art container is disclosed as being integrally molded. However, it would also have been obvious to mold the containers of each reference to provide a simple way to construct them. In another example, if not provided for therein, it would have been obvious to provide the containers of each reference with suspension means as well as with suspension means that were different, depending on what the containers were to be suspended from, etc. The prior art of record shows that various suspension means are known in the art for provision on all sorts of molded containers. In yet another example, it would have been obvious to provide containers of each reference to have slightly different forms or receiving means, depending, for example, on the specific content of the container. As one example only, Schlaupitz teaches that the container should conform to the shape of the pie slice that is to be contained in it, and of course, pie slices are conventionally made in slightly different shapes. In yet another example, it would have been obvious to any container maker to construct multiple containers of the kind taught in each reference in various sizes, for the purpose of accommodating more or less product as the case may be.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacob K. Ackun Jr. whose telephone number is

(571)272-4418. The examiner can normally be reached on Monday through Friday 8.30AM-5.00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jacob K. Ackun Jr./  
Primary Examiner, Art Unit 3728